

Agricultural Marketing Service, USDA

§ 927.70

practical after the beginning of each fiscal period on either:

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for varieties or subvarieties with less than 200,000 standard boxes or container equivalents) of the average quantity of such variety or subvariety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

(2) Such other basis as the Fresh Pear Committee or the Processed Pear Committee may recommend and the Secretary may approve. The votes so allotted to a member may be cast by such member on each recommendation relative to the variety or subvariety of pears on which such votes were computed.

§ 927.53 Notification.

(a) The Fresh Pear Committee shall give prompt notice to growers and handlers of each recommendation to the Secretary pursuant to the provisions of § 927.50.

(b) The Secretary shall immediately notify the Fresh Pear Committee of the issuance of each regulation and of each modification, suspension, or termination of a regulation and the Fresh Pear Committee shall give prompt notice thereof to growers and handlers.

§ 927.54 [Reserved]

INSPECTION

§ 927.60 Inspection and certification.

(a) Handlers shall ship only fresh pears inspected by the Federal-State Inspection Service or under a program developed by the Federal-State Inspection Service: except, that such inspection and certification of shipments of pears may be performed by such other inspection service as the Fresh Pear Committee, with the approval of the Secretary, may designate. Promptly after shipment of any pears, the handler shall submit, or cause to be submitted, to the Fresh Pear Committee a copy of the inspection certificate issued on such shipment.

(b) Any handler may ship pears, on any one conveyance and in such quantity as the committee, with the approval of the Secretary, may prescribe,

exempt from the inspection and certification requirements of paragraph (a) of this section.

(c) The Fresh Pear Committee may, with the approval of the Secretary, prescribe rules and regulations modifying or eliminating the requirement for mandatory inspection and certification of shipments: Provided, That an adequate method of ensuring compliance with quality and size requirements is developed.

EXCEPTIONS

§ 927.65 Exemption from regulation.

(a) Nothing contained in this subpart shall limit or authorize the limitation of shipment of pears for consumption by charitable institutions or distribution by relief agencies, nor shall any assessment be computed on pears so shipped. The Fresh Pear Committee or the Processed Pear Committee may prescribe regulations to prevent pears shipped for either of such purposes from entering commercial channels of trade contrary to the provisions of this subpart.

(b) The Fresh Pear Committee or the Processed Pear Committee may prescribe rules and regulations, to become effective upon the approval of the Secretary, whereby quantities of pears or types of pear shipments may be exempted from any or all provisions of this subpart.

MISCELLANEOUS PROVISIONS

§ 927.70 Reports.

(a) Upon the request of the Fresh Pear Committee or the Processed Pear Committee, and subject to the approval of the Secretary, each handler shall furnish to the aforesaid committee, respectively, in such manner and at such times as it prescribes, such information as will enable it to perform its duties under this subpart.

(b) All such reports shall be held under appropriate protective classification and custody by the Fresh Pear Committee or the Processed Pear Committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers

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will not be disclosed. Compilations of general reports from data submitted by handlers are authorized subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the pears received and of pears disposed of, by such handler as may be necessary to verify reports pursuant to this section.

§ 927.71 Compliance.

Except as provided in § 927.65, no handler shall ship any pears contrary to the applicable restrictions and limitations specified in, or effective pursuant to, the provisions of this subpart.

§ 927.72 Duration of immunities.

The benefits, privileges, and immunities conferred by virtue of this subpart shall cease upon termination hereof, except with respect to acts done under and during the existence of this subpart.

§ 927.73 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remaining provisions and the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 927.74 Derogation.

Nothing contained in this subpart is or shall be construed to be in derogation of, or in modification of, the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 927.75 Liability.

No member or alternate for a member of the Fresh Pear Committee or the Processed Pear Committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under this subpart or to any other person for errors in judgment, mistakes, or other acts, either of commission or

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omission, as such member, alternate for a member, agent or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 927.76 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the Government or any bureau or division in the Department of Agriculture to act as his or her agent or representative in connection with any of the provisions of this subpart.

§ 927.77 Effective time.

The provisions of this subpart and of any amendment thereto shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways specified in § 927.78.

§ 927.78 Termination.

(a) The Secretary may at any time terminate this subpart.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he or she finds that such operation obstructs or does not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart applicable to fresh pears for market or pears for processing at the end of any fiscal period whenever the Secretary finds, by referendum or otherwise, that such termination is favored by a majority of growers of fresh pears for market or pears for processing, respectively: *Provided*, That such majority has during such period produced more than 50 percent of the volume of fresh pears for market or pears for processing, respectively, in the production area. Such termination shall be effective only if announced on or before the last day of the then current fiscal period.

(d) The Secretary shall conduct a referendum within every six-year period beginning on May 21, 2005, to ascertain whether continuance of the provisions of this subpart applicable to fresh pears for market or pears for processing are favored by producers of pears for the fresh market and pears for processing, respectively. The Secretary may terminate the provisions of this subpart at